

## **ORDINANCE NO. 2013-31**

### **Creation of Jefferson County Mobile Tower Siting Permit section of the Zoning Ordinance**

WHEREAS, the Jefferson County Board of Supervisors has heretofore been petitioned to amend the text of the Jefferson County Zoning Ordinance in Section 11.05(h), and

WHEREAS, Petition R3705T-14 was referred to the Jefferson County Planning and Zoning Committee for public hearing on February 20, 2014, and

WHEREAS, as a result of that public hearing, and after discussion with the Planning and Zoning Committee, Corporation Counsel and the towns of Jefferson County, it was determined that there is a need to change side and rear setback requirements in 11.04(f) and 11.04(f)4, the Business and Industrial Zoning Controls, with this amendment to comply with a state-mandated change, and

WHEREAS, the proposed amendment has been given due consideration by the Board of Supervisors in open session,

NOW, THEREFORE, BE IT ORDAINED that the Jefferson County Board of Supervisors does amend the text of the Zoning Ordinance of Jefferson County by repealing § 11.05(h) and creating § 11.055 to read as follows:

**(1) TITLE.** This section of the Zoning Ordinance is entitled Mobile Tower Siting Permit, Section 11.055.

**(2) PURPOSE.** The purpose of this ordinance is to regulate by zoning permit (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities. It is the intent of Jefferson County to regulate Mobile Service Support Structures and Facilities as permitted by Wisconsin State Statutes Chapter 66.0404.

**(3) AUTHORITY.** The Jefferson County Board has the specific authority under ss. 59.69 and 66.0404, Wis. Stats., to adopt and enforce this section.

**(4) ADOPTION OF ORDINANCE SECTION.** This section provides for the regulation by zoning permit (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

**(5) DEFINITIONS.**

- a. All definitions contained in s. 66.0404(1) are hereby incorporated by reference.

**(6) EXEMPT FROM PERMITTING.** The following shall be exempt from the requirement to obtain a land use permit, unless otherwise noted.

- a. The use of all receive-only television antenna and satellite dishes.
- b. Amateur Radio and/or Receive-Only Antennas. This ordinance shall not govern the installation of any antenna that is owned and/or operated by a federally licensed amateur radio operator and is used for amateur radio purposes or is used exclusively for receive-only purposes.
- c. Mobile services providing public information coverage of news events of a temporary or emergency nature.

**(7) SITING AND CONSTRUCTION OF ANY NEW MOBILE SERVICE SUPPORT STRUCTURE AND FACILITIES AND CLASS I COLLOCATION.**

a. Application Process

- 1. A County zoning permit is required for the siting and construction of any new mobile service support structure and facilities.
- 2. A written permit application must be completed by any applicant and submitted to the County Planning and Zoning Department. The application must contain the following information:
  - A. The name and business address of, and the contact individual for, the applicant.
  - B. The location of the proposed or affected support structure.
  - C. The location of the proposed mobile service facility.
  - D. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
  - E. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
  - F. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- 3. A permit application will be provided by the County upon request to any applicant.

4. If an applicant submits to the County an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the County shall consider the application complete. If the County does not believe that the application is complete, the County shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
5. Within 90 days of its receipt of a complete application, the County shall complete all of the following or the applicant may consider the application approved, except that the applicant and the County may agree in writing to an extension of the 90 day period:
  - A. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
  - B. Make a final decision whether to approve or disapprove the application.
  - C. Notify the applicant, in writing, of its final decision.
  - D. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
6. The County may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.f.
7. If an applicant provides the County with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the county provides the applicant with substantial evidence that the engineering certification is flawed.
8. The fee for the permit is \$3,000 per s. 66.0404(4)(d).
9. Limitations. Land Use Permits for Siting and Construction of any new mobile service support structure and facilities and land use permits for class 1 collocations shall only be granted provided the following conditions exist:
  - A. If the location of the proposed mobile service support structure or mobile service facility is on leased land, the lease agreement does not preclude the lessee from entering into leases on the site with other provider(s) and there is no other lease provision operating as a bar to collocation of other providers.
  - B. The applicant has obtained Federal Communications Commission (FCC) license numbers and registration numbers if applicable.
  - C. The applicant and/or agent have copies of Findings of No Significant Impacts (FONI) statement from the Federal Communications Commission (FCC) or Environmental Assessment or Environmental Impact Study (EIS), if applicable.
  - D. The applicant and/or agent have copies of the determination of no hazard from the Federal Aviation Administration (FAA) including any aeronautical study determination or other findings, if applicable.

- E. The applicant and/or agent have plans indicating security measures (i.e. access, fencing, lighting, etc.).
- F. For new mobile service support structures, the applicant has obtained a report prepared by an engineer licensed by the State of Wisconsin certifying the structural design of the tower and its ability to accommodate additional antennas.
- G. The applicant and/or agent have proof of liability coverage.
- H. The applicant and/or agent have copies of an Affidavit of Notification indicating that all operators and owners of airports located within five (5) miles of the proposed site have been notified via certified mail.
- I. The facility or collocation is designed to promote site sharing, such that space is reasonably available to collocators and such that telecommunication towers and necessary appurtenances, including but not limited to parking areas, access road, and utilities, are shared by site users whenever possible.

**(8) CLASS 2 COLLOCATION.**

- a. Application Process
  - 1. A county zoning permit is required for a class 2 collocation. A class 2 collocation is a permitted use in the county but still requires the issuance of the county permit.
  - 2. A written permit application must be completed by any applicant and submitted to the Jefferson County Planning and Zoning Department. The application must contain the following information:
    - A. The name and business address of, and the contact individual for, the applicant.
    - B. The location of the proposed or affected support structure.
    - C. The location of the proposed mobile service facility.
  - 3. A permit application will be provided by the County upon request to any applicant.
  - 4. A class 2 collocation is subject to the same requirements for the issuance of a zoning permit to which any other type of commercial development or land use development is subject, except that the maximum fee for a zoning permit shall be \$500.
  - 5. If an applicant submits to the County an application for a zoning permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the County shall consider the application complete. If any of the required information is not in the application, the county shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
  - 6. Within 45 days of its receipt of a complete application, the County shall complete all of the following or the applicant may consider the application

approved, except that the applicant and the County may agree in writing to an extension of the 45 day period:

- A. Make a final decision whether to approve or disapprove the application.
  - B. Notify the applicant, in writing, of its final decision.
  - C. If the application is approved, issue the applicant the relevant permit.
  - D. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
7. The fee for the permit is \$500 per s. 66.0404(4) (d).

**(9) Information Report.** The purpose of the report under this subsection is to provide the County with accurate and current information concerning the telecommunications facility owners and providers who offer or provide telecommunications services within the county, or that own or operate telecommunications facilities within the county, to assist the County in enforcement of this subsection, and to assist the County in monitoring compliance with local, state and federal laws.

- a. Information Report. All telecommunications tower owners of any new telecommunications tower shall submit to the Planning and Zoning Department a Telecommunications Facility Information Report (the "Report") within 45 days:
  - 1. Following conditional use approval;
  - 2. Of receipt of a written request from the Jefferson County Department of Planning and Zoning; and
  - 3. Of any change in occupancy of the tower.

The Report shall include the tower owner name(s), address(es), phone number(s), contact person(s), and proof of bond as security for removal. The tower owner shall supply the tower height or current occupancy, if applicable, the number of collocation positions designated, occupied or vacant. This information shall be submitted on the county form provided and designated for such use, and shall become evidence of compliance.

**(10) Removal/Security for Removal.**

- a. It is the express policy of Jefferson County and this ordinance that telecommunications towers be removed once they are no longer in use and not a functional part of providing telecommunications service, and that it is the telecommunications provider's responsibility to remove such telecommunications tower and restore the site to its original condition or a condition approved by the Jefferson County Planning and Zoning Department. This restoration shall include removal of any subsurface structure or foundation, including concrete, used to support the telecommunications tower down to 5 feet below the surface. After a telecommunications tower is no longer in operation, the provider shall have 180 days to effect removal and restoration unless weather prohibits such efforts. Permittee shall record a document with the Jefferson County Register of Deeds showing the existence of any subsurface structure remaining below grade. Such recording shall accurately set forth the location and describe the remaining structure.

- b. Security for Removal. The owner of any telecommunications tower shall provide to Jefferson County, prior to the issuance of the conditional use permit or the issuance of a zoning permit, a performance bond in an amount based on a written estimate of a qualified remover of said types of structures, or Twenty Thousand Dollars (\$20,000), whichever is less, to guarantee that the telecommunications tower will be removed when no longer in operation. Jefferson County will be named as obligee in the bond and must approve the bonding company. The County may require an increase in the bond amount after five (5) year intervals to reflect increases in the Consumer Price Index. The provider shall supply any increased bond within a reasonable time, not exceeding sixty (60) days, after the County's request. A permittee may submit a letter of credit in the amount set forth above, or, in the alternative, a permittee with several sites in the county may submit a master bond to cover all of said sites. A master bond or a letter of credit may, in the Committee's discretion, be in an amount sufficient to secure removal from one site if the master bond or letter of credit provides for replenishing any amount used as the master bond or letter of credit covers any other site in the county.

**(11) Structural, Design and Environmental Standards.**

- a. Mobile Service Support Structure, Antenna and Facilities Requirements. All mobile service facilities and mobile service support structures, except exempt facilities as defined in subsection (c), shall be designed to reduce the negative impact on the surrounding environment by implementing the measures set forth below:
  1. Mobile service support structures shall be constructed of metal or other nonflammable material, unless specifically permitted by the County to be otherwise.
  2. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their functions.
  3. Equipment compounds shall be constructed of nonreflective materials (visible exterior surfaces only). Equipment compounds shall be designed to blend with existing architecture in the area or shall be screened from sight by mature landscaping, and shall be located or designed to minimize their visibility.
  4. Mobile service facilities, support structures and antennas shall be designed and constructed in accordance with the State of Wisconsin Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, Jefferson County Subdivision Ordinance, Jefferson County Sanitation Ordinance, Electronic Industries Association (EIA), American National Steel Institute Standards (ANSI), and American National Standards Institute (ANSI) in effect at the time of manufacture. Mobile service facilities and support structures shall not interfere with or obstruct existing or proposed public safety, fire protection or Supervisory Controlled Automated Data Acquisition (SCADA) operation telecommunication facilities. Any actual interference and/or obstruction shall be corrected by the applicant at no cost to the County.

- b. Site Development. A leased parcel intended for the location of new mobile service facilities, mobile service support structures, and equipment compounds shall be located so as to permit expansion for mobile service facilities to serve all potential collocators.
- c. Vegetation protection and facility screening.
  - 1. Except exempt facilities as defined in subsection (c), all mobile service facilities shall be installed in a manner as to minimize disturbance to existing native vegetation and shall include suitable mature landscaping to screen the facility, where necessary. For purposes of this section, “mature landscaping” shall mean trees, shrubs or other vegetation of a minimum initial height of five (5) feet that will provide the appropriate level of visual screening immediately upon installation.
  - 2. Upon project completion, the owner(s)/operator(s) of the facility shall be responsible for maintenance and replacement of all required landscaping as long as a telecommunication facility is maintained on the site.
- d. Fire prevention. All mobile service facilities shall be designed and operated in accordance with all applicable codes regarding fire prevention.
- e. Noise and Traffic. All mobile service facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to nearby properties. To that end the following measures shall be implemented for all mobile service facilities, except exempt facilities as defined in subsection (c):
  - 1. Noise producing construction activities shall take place only on weekdays (Monday through Saturday, non-holiday) between the hours of 6:00 a.m. and 6:00 p.m., except in times of emergency repair, and
  - 2. Backup generators, if present, shall be operated only during power outages and for testing and maintenance purposes.
- f. Separation Requirements. Mobile service support structures shall be separated by a minimum of 2640 feet, except that:
  - 1. Two (2) mobile service support structures may be permitted to be located within 100 feet of each other subject to approval of the Jefferson County Planning and Zoning Committee.
  - 2. Camouflaged mobile service support structures are exempt from the separation between mobile service support structures requirement listed above.

**(12) ABANDONMENT.**

- a. Abandonment. Any antenna, mobile service facility, or mobile service support structure that is not operated for a continuous period of twelve (12) months shall be considered abandoned. Upon application, the Committee may extend the time limit to abandon once for an additional twelve-month period. Such extension shall be based on the finding that the owner or permit holder is actively seeking tenants for the site. After the expiration of the time periods established above, the following shall apply:
  - 1. The owner of such antenna, mobile service facility or mobile service support structure shall remove said antenna, mobile service facility or mobile service support structure, including all supporting equipment, building(s) and

foundations to the depth as otherwise herein required within ninety (90) days of receipt of notice from the Planning and Zoning Department notifying the owner of such abandonment. If removal to the satisfaction of the Planning and Zoning Department does not occur within said ninety (90) days, the Jefferson County Zoning Director may order removal utilizing the established bond as provided under subsection (g) and salvage said antenna, mobile service facility or mobile service support structure, including all supporting equipment and building(s). If there are two or more users of a single mobile service support structure, then this provision shall not become effective until all operations of the mobile service support structure cease.

2. The recipient of a zoning permit allowing a mobile service support structure and facility under this section, or the current owner or operator, shall notify the Jefferson County Planning and Zoning Department within 45 days of the date when the mobile service facility is no longer in operation.

**(13) SEVERABILITY.** If any provision of this ordinance or its application to any person or circumstance is held invalid according to Wisconsin State Statutes 66.0404, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**MODIFICATION OF SEC. 11.04(f) 3 and 11.04(f)4**

Modify 11.04(f)3. Business:

Minimum Yards. ~~Rear—40 feet. Side—10 feet each.~~ One half (1/2) the height of the structure for side and rear.

Modify 11.04(f)4. Industrial:

Minimum Yards. ~~Rear—40 feet if adjacent to an R zone, 10 feet otherwise; Side—40 feet if adjacent to an R zone, 10 feet otherwise.~~ One half (1/2) the height of the structure for side and rear. (R3705T-14 – Jefferson County)

Adopted by the Jefferson County Board of Supervisors this 11th day of March 2014.

s/John Molinaro

John Molinaro

Chair

ATTEST:

s/Barbara A. Frank

Barbara A. Frank, County Clerk

Published this 14th day of March 2014.



Ayes\_voice vote\_\_\_\_\_ Noes\_\_\_\_\_ Abstain\_\_\_\_\_ Absent\_\_\_\_\_ Vacant\_\_\_\_\_

Requested by  
Planning & Zoning Committee

0-3-11-14

Deb Magritz: 3-3-14; Phil Ristow: 03-06-14